



March 13, 2007

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## ENGROSSED HOUSE BILL No. 1291

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DIGEST OF HB 1291 (Updated March 7, 2007 11:48 am - DI 106)

**Citations Affected:** IC 33-23; IC 33-39.

**Synopsis:** Appointment of special prosecutors. Requires a court to appoint a special prosecutor if: (1) a previously appointed special prosecutor files a motion to withdraw as special prosecutor or has become incapable of continuing to represent the interests of the state; and (2) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist. Makes numerous changes to the law concerning the compensation of special prosecutors. Permits a prosecuting attorney to establish a youth mentoring program as a tax exempt organization and receive charitable contributions, appropriations, and grants to establish or administer the program. Requires the prosecuting attorney to make an annual report to the county fiscal body concerning the youth mentoring program, and provides that the youth mentoring program is subject to audit by the state board of accounts. Increases the compensation paid to a senior judge from \$50 to \$100 for the first thirty days of service, and from \$200 to \$250 for each day of service after the thirtieth day.

**Effective:** July 1, 2007.

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### Van Haaften, Thomas

(SENATE SPONSORS — BRAY, BRODEN)

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January 11, 2007, read first time and referred to Committee on Courts and Criminal Code.  
February 1, 2007, amended, reported — Do Pass.  
February 6, 2007, read second time, ordered engrossed.  
February 7, 2007, engrossed.  
February 7, 2007, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

February 19, 2007, read first time and referred to Committee on Judiciary.  
March 12, 2007, amended, reported favorably — Do Pass.

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EH 1291—LS 6651/DI 107+



March 13, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1291

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 33-23-3-5, AS AMENDED BY P.L.246-2005,  
2 SECTION 220, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A senior judge is entitled to  
4 the following compensation:

5 (1) For each of the first thirty (30) days of service in a calendar  
6 year, a per diem of **fifty one hundred** dollars ~~(\$50)~~ **(\$100)**.

7 (2) Except as provided in subsection (c), for each day the senior  
8 judge serves after serving the first thirty (30) days of service in a  
9 calendar year, a per diem of two hundred **fifty** dollars ~~(\$200)~~  
10 **(\$250)**.

11 (3) Reimbursement for:

12 (A) mileage; and

13 (B) reasonable expenses, including but not limited to meals  
14 and lodging, incurred in performing service as a senior judge;  
15 for each day served as a senior judge.

16 (b) Subject to subsection (c), the per diem and reimbursement for  
17 mileage and reasonable expenses under subsection (a) shall be paid by

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1 the state.

2 (c) The compensation under subsection (a)(2) must be paid by the  
3 state from funds appropriated to the supreme court for judicial payroll.  
4 If the payroll fund is insufficient to pay the compensation under  
5 subsection (a)(2), the supreme court may issue an order adjusting the  
6 compensation rate.

7 (d) A senior judge appointed under this chapter may not be  
8 compensated as a senior judge for more than one hundred (100) total  
9 calendar days during a calendar year.

10 SECTION 2. IC 33-39-1-1 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this  
12 chapter, "senior prosecuting attorney" means a person who:

- 13 (1) was employed for at least eight (8) years as a prosecuting  
14 attorney or chief deputy prosecuting attorney; and  
15 (2) files an affidavit requesting designation as a senior  
16 prosecuting attorney in the circuit court **and each superior court**  
17 in a county in which the person is willing to serve as a senior  
18 prosecuting attorney.

19 (b) An affidavit filed under subsection (a) must contain the  
20 following:

- 21 (1) The name of the person filing the affidavit.  
22 (2) The person's attorney number issued by the supreme court.  
23 (3) The length of time the person served as a chief deputy  
24 prosecuting attorney or prosecuting attorney.  
25 (4) The name of any county in which the person served as a chief  
26 deputy prosecuting attorney or prosecuting attorney.

27 (c) The circuit **or superior** court shall promptly forward each  
28 affidavit received under this section to the prosecuting attorneys  
29 council of Indiana.

30 SECTION 3. IC 33-39-1-6, AS AMENDED BY P.L.222-2005,  
31 SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 JULY 1, 2007]: Sec. 6. (a) Special prosecutors may be appointed under  
33 this section or in accordance with IC 4-2-7-7.

34 (b) A circuit or superior court judge:

- 35 (1) shall appoint a special prosecutor if:  
36 (A) any person other than the prosecuting attorney or the  
37 prosecuting attorney's deputy files a verified petition  
38 requesting the appointment of a special prosecutor; and  
39 (B) the prosecuting attorney agrees that a special prosecutor is  
40 needed;  
41 (2) may appoint a special prosecutor if:  
42 (A) a person files a verified petition requesting the

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- 1 appointment of a special prosecutor; and  
 2 (B) the court, after:  
 3 (i) notice is given to the prosecuting attorney; and  
 4 (ii) an evidentiary hearing is conducted at which the  
 5 prosecuting attorney is given an opportunity to be heard;  
 6 finds by clear and convincing evidence that the appointment  
 7 is necessary to avoid an actual conflict of interest or there is  
 8 probable cause to believe that the prosecutor has committed a  
 9 crime;  
 10 (3) may appoint a special prosecutor if:  
 11 (A) the prosecuting attorney files a petition requesting the  
 12 court to appoint a special prosecutor; and  
 13 (B) the court finds that the appointment is necessary to avoid  
 14 the appearance of impropriety; ~~and~~  
 15 (4) may appoint a special prosecutor if:  
 16 (A) an elected public official, who is a defendant in a criminal  
 17 proceeding, files a verified petition requesting a special  
 18 prosecutor within ten (10) days after the date of the initial  
 19 hearing; and  
 20 (B) the court finds that the appointment of a special prosecutor  
 21 is in the best interests of justice; **and**  
 22 **(5) shall appoint a special prosecutor if:**  
 23 **(A) a previously appointed special prosecutor:**  
 24 **(i) files a motion to withdraw as special prosecutor; or**  
 25 **(ii) has become incapable of continuing to represent the**  
 26 **interests of the state; and**  
 27 **(B) the court finds that the facts that established the basis**  
 28 **for the initial appointment of a special prosecutor still**  
 29 **exist.**  
 30 **The elected prosecuting attorney of the appointing**  
 31 **jurisdiction shall receive notice of all pleadings filed and**  
 32 **orders issued under this subdivision.**  
 33 (c) Each person appointed to serve as a special prosecutor:  
 34 (1) must consent to the appointment; and  
 35 (2) must be:  
 36 (A) the prosecuting attorney or a deputy prosecuting attorney  
 37 in a county other than the county in which the person is to  
 38 serve as special prosecutor; or  
 39 (B) except as provided in subsection (d), a senior prosecuting  
 40 attorney.  
 41 (d) A senior prosecuting attorney may be appointed in the county in  
 42 which the senior prosecuting attorney previously served if the court

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finds that an appointment under this subsection would not create the appearance of impropriety.

(e) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(f) The court shall establish the length of the special prosecutor's term. If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-41-1-24), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. The report is a public record.

(g) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and

(2) may not exceed:

(A) ~~a per diem equal to an hourly rate based upon~~ the regular salary of a full-time prosecuting attorney of the appointing circuit; ~~and~~

(B) travel expenses and reasonable accommodation expenses actually incurred; ~~and~~

**(C) other reasonable expenses actually incurred, including the costs of investigation, discovery, and secretarial work, if:**

**(i) before incurring the other reasonable expenses described in this clause, the special prosecutor submits an application to the court to receive the other reasonable expenses; and**

**(ii) the court approves the expenses.**

**The amount of compensation a special prosecutor receives for services performed during a calendar day under subdivision (2)(A) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day.**

(h) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and

(2) must include a per diem equal to the regular salary of a

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1 full-time prosecuting attorney of the appointing circuit, travel  
 2 expenses, and reasonable accommodation expenses actually  
 3 incurred.

4 (i) The combination of:

5 (1) the compensation paid to a senior prosecuting attorney under  
 6 this chapter; and

7 (2) retirement benefits that the person appointed as a senior  
 8 prosecuting attorney is receiving or entitled to receive;

9 may not exceed the minimum compensation to which a full-time  
 10 prosecuting attorney is entitled under IC 33-39-6-5.

11 (j) A senior prosecuting attorney appointed under this chapter may  
 12 not be compensated as senior prosecuting attorney for more than one  
 13 hundred (100) calendar days in total during a calendar year **if the**  
 14 **senior prosecuting attorney receives retirement benefits during the**  
 15 **calendar year. However, if the senior prosecuting attorney does not**  
 16 **receive retirement benefits during a calendar year, the senior**  
 17 **prosecuting attorney may be compensated as a senior prosecuting**  
 18 **attorney for not more than two hundred (200) calendar days in**  
 19 **total during the calendar year.**

20 SECTION 4. IC 33-39-2-7 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 22 1, 2007]: Sec. 7. (a) A prosecuting attorney may establish and  
 23 administer a youth mentoring program.

24 (b) To establish or administer a youth mentoring program  
 25 described in subsection (a), a prosecuting attorney may:

26 (1) establish and administer an organization that is exempt  
 27 from federal income taxation under Section 501(c)(3) of the  
 28 Internal Revenue Code;

29 (2) provide staff and material support to the organization;  
 30 and

31 (3) receive and expend charitable contributions,  
 32 appropriations, and federal, state, local, or private grants.

33 (c) The prosecuting attorney shall provide an annual report to  
 34 the county fiscal body concerning the youth mentoring program  
 35 established under subsection (a). The youth mentoring program is  
 36 subject to audit by the state board of accounts.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1291, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-39-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) As used in this chapter, "senior prosecuting attorney" means a person who:

- (1) was employed for at least eight (8) years as a prosecuting attorney or chief deputy prosecuting attorney; and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in the circuit court **and each superior court** in a county in which the person is willing to serve as a senior prosecuting attorney.

(b) An affidavit filed under subsection (a) must contain the following:

- (1) The name of the person filing the affidavit.
- (2) The person's attorney number issued by the supreme court.
- (3) The length of time the person served as a chief deputy prosecuting attorney or prosecuting attorney.
- (4) The name of any county in which the person served as a chief deputy prosecuting attorney or prosecuting attorney.

(c) The circuit **or superior** court shall promptly forward each affidavit received under this section to the prosecuting attorneys council of Indiana."

Page 2, delete lines 18 through 29, begin a new line block indented and insert:

**"(5) shall appoint a special prosecutor if:**

**(A) a previously appointed special prosecutor:**

- (i) files a motion to withdraw as special prosecutor; or**
- (ii) has become incapable of continuing to represent the interests of the state; and**

**(B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.**

**The elected prosecuting attorney of the appointing jurisdiction shall receive notice of all pleadings filed and orders issued under this subdivision."**

Page 3, line 16, strike "a per diem equal to" and insert **"an hourly rate based upon"**.

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Page 3, line 17, strike "and".

Page 3, line 19, delete "." and insert "; and

**(C) other reasonable expenses actually incurred, including the costs of investigation, discovery, and secretarial work, if:**

**(i) the special prosecutor submits an application to the court to receive the other reasonable expenses; and**

**(ii) the court approves the expenses.**

**The amount of compensation a special prosecutor receives for services performed during a calendar day under subdivision (2)(A) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day."**

Page 3, line 39, delete "." and insert **"if the senior prosecuting attorney receives retirement benefits during the calendar year. However, if the senior prosecuting attorney does not receive retirement benefits during a calendar year, the senior prosecuting attorney may be compensated as a senior prosecuting attorney for not more than two hundred (200) calendar days in total during the calendar year."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1291 as introduced.)

HOY, Chair

Committee Vote: yeas 11, nays 0.

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1291, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-23-3-5, AS AMENDED BY P.L.246-2005, SECTION 220, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A senior judge is entitled to the following compensation:

(1) For each of the first thirty (30) days of service in a calendar year, a per diem of **fifty one hundred** dollars ~~(\$50)~~ **(\$100)**.

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(2) Except as provided in subsection (c), for each day the senior judge serves after serving the first thirty (30) days of service in a calendar year, a per diem of two hundred **fifty** dollars ~~(\$200)~~ **(\$250)**.

(3) Reimbursement for:

(A) mileage; and

(B) reasonable expenses, including but not limited to meals and lodging, incurred in performing service as a senior judge; for each day served as a senior judge.

(b) Subject to subsection (c), the per diem and reimbursement for mileage and reasonable expenses under subsection (a) shall be paid by the state.

(c) The compensation under subsection (a)(2) must be paid by the state from funds appropriated to the supreme court for judicial payroll. If the payroll fund is insufficient to pay the compensation under subsection (a)(2), the supreme court may issue an order adjusting the compensation rate.

(d) A senior judge appointed under this chapter may not be compensated as a senior judge for more than one hundred (100) total calendar days during a calendar year."

Page 4, line 1, after "(i)" insert "**before incurring the other reasonable expenses described in this clause,**".

Page 4, after line 33, begin a new paragraph and insert:

"SECTION 4. IC 33-39-2-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) A prosecuting attorney may establish and administer a youth mentoring program.**

**(b) To establish or administer a youth mentoring program described in subsection (a), a prosecuting attorney may:**

**(1) establish and administer an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;**

**(2) provide staff and material support to the organization; and**

**(3) receive and expend charitable contributions, appropriations, and federal, state, local, or private grants.**

**(c) The prosecuting attorney shall provide an annual report to the county fiscal body concerning the youth mentoring program established under subsection (a). The youth mentoring program is**

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**subject to audit by the state board of accounts."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1291 as printed February 2, 2007.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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